

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

WILLIAM AVILES HARDWOOD
FLOORS,

Plaintiff,

v.

JTEKT CORPORATION, et al.,

Defendants.

Case No. [14-cv-00114-BLF](#)

**ORDER DENYING, WITHOUT
PREJUDICE, ADMINISTRATIVE
MOTION TO FILE CERTAIN
PORTIONS OF AMENDED
COMPLAINT UNDER SEAL**

[Re: ECF No. 91]

Before the Court is Plaintiff William Aviles Hardwood Floors' administrative motion to file Paragraphs 92 and 94-99 of its Amended Class Action and Representative Action Complaint ("FACC") under seal. (Admin. Mot., ECF 91) Defendants have not filed any opposition to the sealing request. However, because Plaintiff has not articulated compelling reasons in support of its sealing request, the Court DENIES Plaintiff's administrative motion without prejudice.

There is a "strong presumption in favor of access" to public records and documents, including judicial ones. *Kamakana v. City & Cnty. of Honolulu*, 447 F.3d 1172, 1178-79 (9th Cir. 2006). A party seeking to seal a judicial record bears the burden of overcoming this presumption by articulating "compelling reasons" for sealing. *Id.* The Ninth Circuit has carved out an exception for materials attached to non-dispositive motions, applying the lower "good cause" standard for sealing such documents. *Id.* 1179-80. As explained in *Kamakana*, however, the public has less need to access materials attached to non-dispositive motions because they are often "unrelated, or only tangentially related, to the underlying cause of action." *Id.* (quoting *Phillips v. General Motors Corp.*, 307 F.3d 1206, 1213 (9th Cir. 2002)). The same cannot be said for dispositive motions and documents related to the merits of the case, as such documents are "at the

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ORDER DENYING, WITHOUT PREJUDICE, ADMINISTRATIVE MOTION TO FILE CERTAIN PORTIONS OF AMENDED COMPLAINT UNDER SEAL

1 heart of the interest in ensuring the ‘public’s understanding of the judicial process and of
2 significant public events.’” *Id.* at 1179 (quoting *Valley Broad. Co. v. U.S. Dist. Court for Dist. of*
3 *Nevada*, 798 F.2d 1289, 1294 (9th Cir. 1986)).

4 Although a complaint is not fixed in stone, it does define—until it is amended—the dispute
5 between the parties and thereby forms the foundation for any decision on the merits. As such,
6 before the Court will permit Plaintiff to seal portions of its FACC, Plaintiff must articulate
7 “compelling reasons supported by specific factual findings that outweigh the general history of
8 access and the public policies favoring disclosure.” *Id.* at 1178-79 (internal quotations and
9 citations omitted); accord *In re NVIDIA Corp. Derivative Litig.*, No. C 06-06110 SBA, 2008 WL
10 1859067, at *3 (N.D. Cal. Apr. 23, 2008). Plaintiff has not done so here.

11 In support of its administrative motion, Plaintiff has submitted a brief declaration by
12 counsel Victoria Romanenko attesting that the portions of the FACC sought to be sealed “address
13 highly sensitive and highly confidential non-public business information, personal information and
14 information relating to government investigations,” the disclosure of which “could cause
15 irreparable harm.” (Decl. of Victoria Romanenko ¶¶ 3-4, ECF 91-1) This vague generalization
16 about the confidential nature of the information to be sealed is not sufficiently specific for the
17 Court to conclude that compelling reasons favor secrecy over the strong presumption of public
18 access. While it is likely that some of the information in Paragraphs 92 and 94-99 of the FACC
19 may be sealable, Plaintiff must be more specific in articulating the reasons supporting sealing. *See*
20 *Kamakana*, 447 F.3d at 1179.

21 Plaintiff’s argument that other district courts have sealed documents in similar
22 circumstances is unavailing because the decision to seal must be made on the basis of the
23 documents and facts before this Court.¹ Furthermore, Plaintiff’s note that the parties will submit a
24 protective order to designate the information in Paragraphs 92 and 94-99 as “Highly Confidential”


26 ¹ The Court notes that at least one of the cases that Plaintiff cites for this proposition also discusses
27 *Kamakana* and the applicable standard for sealing. *See Network Appliance Inc. v. Sun*
Microsystems Inc., No. 07-CV-06053-EDL, 2010 WL 841274, at *1 (N.D. Cal. Mar. 10, 2010).

is irrelevant. (*See* Admin. Mot. 2:3-4) A protective order, particularly one adopted by the parties for discovery purposes, is not a blanket authorization to file judicial records under seal. The “compelling reasons” standard applies to requests to seal judicial records “even if the dispositive motion, or its attachments, were previously filed under seal or protective order.” *Kamakana*, 447 F.3d at 1179 (citing *Foltz v. State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1136 (9th Cir. 2003)).

For the foregoing reasons, Plaintiff’s Administrative Motion to File Certain Portions of Amended Complaint Under Seal is DENIED without prejudice. Within **seven (7) days** of the date of this order, Plaintiff shall file a supplemental declaration and, if applicable, brief in support of sealing Paragraphs 92 and 94-99 of the FACC. Plaintiff is also reminded that parties in this District must comply with Civil L.R. 79-5, which requires, *inter alia*, that a sealing request be “narrowly tailored to seek sealing only of sealable material.” Civil L.R. 79-5(b). While Plaintiff’s request to seal only certain paragraphs of its FACC appears to be closely tailored, Plaintiff may wish to revise its redactions according to the applicable “compelling reasons” standard for sealable material.

IT IS SO ORDERED.

Dated: July 16, 2014


BETH LABSON FREEMAN
United States District Judge